

Exhibit 1

Excerpts from Deposition of Kristin Gardner, dated May 7, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

COTTONWOOD ENVIRONMENTAL LAW CENTER, et al. Case No. 2:18-CV-00028-BMM

Plaintiffs,

vs.

RON EDWARDS, in his official
capacity as manager of the Big Sky
Water and Sewer District, et al.
Defendant.

VIDEOCONFERENCE, VIDEO-RECORDED DEPOSITION OF

KRISTIN GARDNER

Taken at:

Nordhagen Court Reporting

1734 Harrison Avenue

Butte, Montana

May 7, 2021

1:10 p.m.

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2 Witness: Page:
3 KRISTIN GARDNER
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10 E X H I B I T S
11 NO. PAGE DESCRIPTION
12 1 15 Nutrient Management Plan
13 2 19 3/4/21 Edwards Transcript
14 3 26 lysimeter data
15 4 35 Declaration of Mark Cunnane
16 5 44 Water Quality Monitoring Plan (moratorium)
17 6 51 9/3/10 TMDL Report
18
19
20
21
22
23
24
25

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1 A. Montana State University.
 2 **Q. And what did you study for your Ph.D. at**
 3 **Montana State University?**
 4 A. Hydrology.
 5 **Q. Did you study nutrients as part of that**
 6 **hydrological exercise in academics?**
 7 A. I did.
 8 **Q. Would you consider yourself to be an**
 9 **expert on nutrients in the Big Sky area?**
 10 A. Yes.
 11 **Q. Do you currently serve as the executive**
 12 **director of the Gallatin River Task Force?**
 13 A. I do.
 14 **Q. Is the Gallatin River Task Force a**
 15 **501(c)(3) nonprofit?**
 16 A. Yes.
 17 **Q. What is the mission of the Gallatin River**
 18 **Task Force?**
 19 A. To partner with a greater community to
 20 inspire stewardship of the Gallatin River Watershed.
 21 **Q. Does the Gallatin River Task Force have a**
 22 **board of directors?**
 23 A. Yes.
 24 **Q. Is the board of directors responsible for**
 25 **helping fundraise your salary?**

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1 A. Yes.
 2 **Q. Is it fair to say that the majority of the**
 3 **Gallatin River Task Force Board of Directors works in**
 4 **real estate or development?**
 5 MR. DODD: If you don't know, you can say
 6 you don't know.
 7 THE WITNESS: I, yeah, I don't know. I'd
 8 have to look at it, at the composition, whether it is.
 9 **Q. (By Mr. Meyer) Is Bob McRae on the**
 10 **Gallatin River Task Force Board of Directors?**
 11 A. Rob McRae, yes.
 12 **Q. Is Rob McRae an owner at Highline**
 13 **Partners?**
 14 A. He is.
 15 **Q. Is Highline Partners a developer in the**
 16 **Big Sky and Yellowstone Club areas?**
 17 A. They build houses, so, yeah.
 18 **Q. Is Heather Budd on the Gallatin River Task**
 19 **Force Board of Directors?**
 20 A. Yes.
 21 **Q. Is Heather Budd the chief financial**
 22 **officer for Highline Partners?**
 23 A. Yes.
 24 **Q. Is Bill Collins on the Board of Directors**
 25 **for the Gallatin River Task force?**

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1 A. Yes.
 2 **Q. Does Bill Collins lead the sales and**
 3 **marketing team at the Yellowstone Club?**
 4 A. Yes.
 5 **Q. Is Eric Ladd on the Gallatin River Task**
 6 **Force Board of Directors?**
 7 A. Yes.
 8 **Q. Does Eric Ladd own L&K Real Estate?**
 9 A. Yes.
 10 **Q. Does L&K Real Estate sell land and houses**
 11 **in Big Sky?**
 12 A. Yes.
 13 **Q. Are houses that are built on any of the**
 14 **land that L&K sells – are houses built on any of the**
 15 **bare land that L&K sells?**
 16 A. I don't know.
 17 **Q. Is Eric Ladd the CEO of Outlaw Partners?**
 18 A. I -- there's a transition. I don't know
 19 if it's occurred yet or not, but he was. I don't
 20 think he is at this moment.
 21 **Q. Okay. Does the Mountain Outlaw publish**
 22 **articles written by Gallatin Task Force employees?**
 23 A. I don't know if we've ever published an
 24 article in that magazine. I don't think we have, but
 25 I'm not sure.

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1 **Q. How about Explore Big Sky?**
 2 A. Yes.
 3 **Q. And that's the weekly newspaper in Big**
 4 **Sky?**
 5 A. Biweekly, yeah.
 6 **Q. And that's also owned or directed by Eric**
 7 **Ladd?**
 8 A. Yes.
 9 **Q. Is Ennion Williams on the Gallatin River**
 10 **Task Force Board of Directors?**
 11 A. Yes.
 12 **Q. Does Ennion Williams work for Eric Ladd?**
 13 A. He works for Outlaw, I believe.
 14 **Q. Okay. Is Rick Chandler on the Gallatin**
 15 **River Task Force Board of Directors?**
 16 A. Yes.
 17 **Q. Does Rick Chandler work at the Yellowstone**
 18 **Club?**
 19 A. Yes.
 20 **Q. Is Ron Edwards on the board of the**
 21 **Gallatin River Task Force?**
 22 A. Yes.
 23 **Q. Is Ron Edwards the manager of the Big Sky**
 24 **Water and Sewer District?**
 25 A. Yes.

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1 who are not experts.

2 **Q. (By Mr. Meyer) Where have you read that?**

3 A. Social media, I think.

4 **Q. Okay. So --**

5 A. Non experts.

6 **Q. Of course, of course; non experts, yes, of**
7 **courses.**

8 **Does your organization support development in**
9 **Big Sky?**

10 A. What do you mean by "support"?

11 **Q. Facilitate?**

12 A. No.

13 **Q. Will the upgraded Water and Sewer District**
14 **allow more homes to be built in Big Sky?**

15 MR. RAUCHWAY: Object to the form and
16 foundation --

17 THE WITNESS: Yes.

18 MR. RAUCHWAY: -- speculation.

19 **Q. (By Mr. Meyer) Do you support the upgraded**
20 **water and sewer treatment plant?**

21 A. I do; we do, yes.

22 **Q. Okay. I think that's all I have. Thank**
23 **you.**

24 MR. RAUCHWAY: I have a handful of
25 questions, Matt, certainly less than 10 minutes. I

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1 can do that now or if you want to make your call and
2 take a short break or if the witness wants to take a
3 short break, that's okay with me, too.

4 MR. DODD: Are you good to go?

5 THE WITNESS: I'm good to go.

6 MR. DODD: Yeah, let's get it knocked out,
7 Jon.

8 MR. RAUCHWAY: Okay.

9
10 BY MR. RAUCHWAY:

11 **Q. Good afternoon, Ms. Gardner. I really do**
12 **just have very few questions. And I know when lawyers**
13 **say that, you want to take it with a grain of salt,**
14 **but I mean it.**

15 MR. RAUCHWAY: Don't ever say that to a
16 judge.

17 **Q. (By Mr. Rauchway) Early in the deposition**
18 **today in a response to one of Mr. Meyer's questions, I**
19 **believe you said that you had told Ron Edwards that**
20 **you thought the golf course had been over-irrigated.**
21 **Do you remember that?**

22 A. Yes.

23 **Q. Was that in connection with your work on**
24 **the TMDL Report?**

25 A. Yes.

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1 **Q. Okay. So this would have been something**
2 **on the order of 10 to 12 years ago?**

3 A. Yes.

4 **Q. Can you describe for us, just very**
5 **briefly, what your role was in developing that TMDL**
6 **Report?**

7 A. Yeah, I, I collected data. It was part of
8 the data that I collected for my doctoral research,
9 and I helped to analyze that data as well for the DEQ.

10 **Q. Okay. And just to make sure that we're**
11 **all on the same page here, I'm just going to put that**
12 **TMDL Report very quickly on my screen, and we can mark**
13 **that as Exhibit 6 if it's the same thing that we're**
14 **all talking about.**

15 (Document marked Deposition
16 Exhibit No. 6 for identification.)

17 BY MR. RAUCHWAY:

18 **Q. Can you see my screen now?**

19 A. Yes.

20 **Q. Okay. So it should say "Exhibit 10." And**
21 **then I'm going to scroll through it. I'm not going to**
22 **scroll through the whole thing because it's a 375-page**
23 **page document, but is this the report that we've been**
24 **calling the "TMDL Report"?**

25 A. Yes.

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1 **Q. Okay. It looks like your name there**
2 **appears as the executive director of the Blue Water**
3 **Task Force?**

4 A. Yes.

5 **Q. Is that the former name of the Gallatin**
6 **River Task Force?**

7 A. It is.

8 **Q. And I thought there was a date on this,**
9 **let's see. Okay, look at the bottom there. I see a**
10 **date of September 30, 2010. Do you see that?**

11 A. Yes.

12 **Q. Is that the date that this report was**
13 **finalized?**

14 A. Yes; around that date, yes.

15 **Q. If you remember, how long did you work on**
16 **this project before this report was finalized in**
17 **September of 2010?**

18 A. I believe it was 2005.

19 **Q. Okay.**

20 A. So five years.

21 **Q. One of the conclusions that's contained**
22 **within this TMDL report that we've marked as Exhibit 6**
23 **is that irrigation of the Meadow Village Golf Course**
24 **contributed to the nitrogen loading in the West Fork**
25 **of the Gallatin. Do you recall that?**

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1 A. Yes.

2 **Q. Have you learned anything in your work**
3 **since September of 2010 that has changed your mind**
4 **about that?**

5 A. We have learned a couple of things. One
6 is that the groundwater from the town center area
7 flows towards the West Fork, and before that, it was
8 thought that it flowed toward the South Fork. So
9 there's significantly other potential sources for
10 wastewater contribution to the West Fork, knowing that
11 information.

12 And then we've also learned that groundwater
13 nutrients in wells that are upgradient of the golf
14 course have very elevated nutrient levels as well, and
15 they are not being impacted by the golf course
16 irrigation. And so there's another source of
17 wastewater, likely, because there's both elevated
18 nutrients and chloride that is coming from upgradient
19 of the golf course and impacting the West Fork.

20 **Q. What is the other source or sources of**
21 **wastewater upgradient of where irrigation is**
22 **conducted?**

23 A. The Firelight community's ductwork system
24 is one large one. The other, we have -- I mean, the
25 other would be insignificant, like pet waste, and that

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1 sort of thing. But the main source would be
2 Firelight, which has been a failing septic system.
3 It's now -- you know for years. It's under a
4 compliance order by the DEQ right now because it's
5 failing.

6 **Q. Okay. I think that's all I have. Thank**
7 **you, Ms. Gardner.**

8 A. You're welcome.

9 MR. MEYER: I have just a few more
10 follow-ups on that, then, unless, Matt, are you going
11 to ask some questions as well?

12 MR. DODD: I'll reserve any until the end.

13 MR. MEYER: Okay.

14 MR. RAUCHWAY: Before you start launching
15 in there, John, I can probably put this document --
16 actually, you probably should already have it, John
17 and Candi, I think it was John's batch of Exhibit 10,
18 and we want to mark that as Exhibit 6.

19 COURT REPORTER: That's fine.

20 I'm sorry, did you say you have it?

21 COURT REPORTER: Yes.

22 MR. RAUCHWAY: Okay. Good to go. Thank
23 you.

24 MR. MEYER: That's the TMJ Report -- how
25 did you say that, Mr. Rauchway?

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1 MR. RAUCHWAY: TMDL, I think it stands for
2 total maximum daily load.

3 MR. MEYER: Thank you. Are you guys
4 ready? I really have just a few more questions.

5 MR. DODD: Yeah. Ready over here.

6
7 BY MR. MEYER:

8 **Q. Ms. Gardner, have you spoken with Ron or**
9 **the Big Sky Water and Sewer District about**
10 **over-irrigation of the golf course since the TMDL**
11 **Report was issued?**

12 A. Yes.

13 **Q. I didn't hear. You say "yes"?**

14 A. Yes.

15 **Q. Okay. So you said there was new sources**
16 **such as the Firelight Meadows. So Does Firelight**
17 **Meadows somehow cancel out the irrigation input that**
18 **was already there or does it contribute to it? How**
19 **does that work?**

20 MR. RAUCHWAY: Object to the form.

21 THE WITNESS: It's another potential
22 source of wastewater. So before we understood that
23 Firelight could be a source, the only source of
24 wastewater that we understood was the golf course
25 irrigation. Now there's another potential source.

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1 **Q. (By Mr. Meyer) How did you guys come to**
2 **the conclusion that it could have been or probably**
3 **was, at the time that the TMDL was issued, the golf**
4 **course as the source?**

5 A. It was, at that time, it was the only
6 source of wastewater that we knew of that contributed
7 to the West Fork.

8 **Q. Did you use any sort of testing to come to**
9 **that conclusion?**

10 A. We did nitrogen isotope testing that
11 indicated it was likely a wastewater source. And then
12 when you're, when -- we, essentially, develop maps to
13 look at the contributing area to the West Fork, and
14 the only source of wastewater that we understood then,
15 from the maps that we had then and the information
16 that we had back then, was that the golf course was
17 the only source of wastewater to the West Fork.

18 **Q. So when you were doing your tests, did you**
19 **get the isotopic fingerprint of the nitrogen from the**
20 **effluent?**

21 A. Yes.

22 **Q. And that fingerprint would tell you that**
23 **the effluent from the Water and Sewer District was, in**
24 **fact, reaching the river?**

25 MR. RAUCHWAY: Object to the form.

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